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TO: Flathead County Board of Adjustment
FROM: Mark Mussman, CFM, Director 
DATE: October 6, 2020
RE: Appeal—20-04—North Fork Land Use Advisory Committee

Course of Proceedings

On June 10, 2020, the Flathead County Planning and Zoning Department received a complaint that property in the North Fork zoning district was being used as a camp and retreat center for yoga events without receiving an approved Conditional Use Permit.

On June 22, 2020, the Department conducted a site visit. After a subsequent conversation with the property owner, all scheduled events were cancelled.

On June 23, 2020, an application was submitted to the Department for a Camp and Retreat Center to permit yoga workshops to be conducted on the property.

On August 4, 2020, the Board of Adjustment heard this request. After an applicant presentation and numerous public comments, the Board of Adjustment denied the request.

On August 6, 2020, a zoning determination letter was sent to the applicant, outlining the permitted uses available on property located in the North Fork zone.

On August 31, 2020, the Department received an application to appeal the interpretation contained in the zoning determination letter.

Nature of the Appeal

The appellant includes four issues in presenting the appeal. These four issues are as follows:

- **Issue 1:** Section 3.40 NF North Fork of the Flathead County Zoning Regulations were misinterpreted.
- **Issue 2:** The rental cabin density was misinterpreted.
- **Issue 3:** A canvass wall tent is not a building or structure
- **Issue 4:** A guest cabin is a detached structure. A tent is not.

Analysis

Issue 1:

Section 2.04.010 of the Flathead County Zoning Regulations requires all appeals be based on an allegation that: “1. The Zoning Administrator made an error in the interpretation of these regulations, and 2. The erroneous interpretation specifically aggrieves the appellant. While the appellant outlines arguments of how the Zoning Administrator misinterpreted the regulations that will be discussed in more detail below, the appellant did not state how they were specifically aggrieved by the interpretations of the regulations. There appears to be no indication how the appellant, the North Fork Land Use Advisory Committee, is specifically aggrieved by the interpretation contained in the zoning determination letter.

Article 2 of the bylaws of the North Fork Land Use Advisory Committee outlines the purpose of this committee. The stated purposes include the committee serving as liaison between North Fork residents and the Planning Department, provide a process among all landowners and residents of the area to enhance the resource values of the North Fork River drainage, allow active participation in shaping and guiding the future of the area, and to periodically review and recommend revisions to the North Fork Neighborhood Plan and Zoning District. What is not enumerated in the Statement of Purpose in the bylaws is the ability to administer and interpret the regulations. The Flathead County Zoning Regulations assigns the duty of administering, interpreting and enforcing the regulations to the Zoning Administrator. If the North Land Use Advisory Committee disagrees with the interpretation of the regulations by the Zoning Administrator, filing an appeal does not appear to be an appropriate method to resolve the issue. The more appropriate method for the North Fork Land Use Advisory Committee to address this disagreement is to initiate a zoning text amendment.

Issue 2:

The appellant argues that Section 3.40.050 on the Flathead County Zoning Regulations states a rental cabin “may be built at a density of ‘one for each five acres of contiguous property owned,’ not one cabin per parcel owned.” The zoning determination letter on which this appeal is based relied on the complete definition of rental cabin as stated in the regulations. The full definition of rental cabin as found in Section 3.40.050(3) states, “Rental cabins may be built at a density of one for each five acres of contiguous property owned. For example, a person owning 20 acres can have four rental cabins in addition to the main residence. One rental cabin is allowed per tract of record regardless of acreage (Lots less than 5.0 acres in size). Standards are the same as those outlined for a guest cabin. A deed restriction shall be placed on qualifying property by a landowner when two or more rental cabins are built and placed in service.”

It appears the appellant is only using part of the definition of rental cabins to argue his point. The part of the definition that appears to have been forgotten by the appellant is, “One rental cabin is allowed per tract of record regardless of acreage.” The properties in question are two separate tracts of record that were created in 1978. Both tracts of record are approximately 2.6 acres in size, but the fact remains that each parcel is permitted one rental cabin because of the fact that they are each a tract of record.

Issue 3:

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The appellant argues that a wall tent is not a building or structure. The Flathead County Zoning Regulations define a building as, "Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattel." A structure is defined in the regulations as, "A combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground including buildings or signs."

It should be noted that Flathead County does not have a building department nor does the County administer any building codes in which the State of Montana has adopted. Having said that, the photographs of the structure in question, which are included in this memorandum, appear to indicate that the structures in question meet the definition of a building because there is clear evidence the structure has a roof that is supported by a wall assembly, and the purpose of the structure is for the enclosure of persons. Moreover, the photographs also clearly indicate the buildings in question utilize a "combination of materials constructed and erected" on the constructed platform which appears to be "permanently on the ground." Just because the appellant believes these buildings and structures should not be considered as such, does not mean they do not meet the definitions of building and structure as stated in the regulations.

Issue 4:

The fourth issue the appellant raises is difficult to understand and does not appear to be relevant to the appeal. The appellant states, "A 'guest cabin' is, by definition, a detached 'structure;' a tent is not. A guest cabin, if rented, becomes a rental cabin." The buildings and structures in question are detached as shown in the attached photographs. Moreover, because the tent structures in question certainly appear to meet the definition of both "building" and "structure," they are detached structures.

Conclusion

The appellant has not specifically stated how they are specifically aggrieved by the interpretation of the North Fork regulations. As stated, if the North Fork Land Use Advisory Committee is unhappy with the wording of the regulations pertaining to guest cabins and rental cabins, the most appropriate means to correct the issue is to propose a text amendment. As to the density requirements of rental cabins, the regulations as currently written allow one rental cabin per tract of record regardless of whether the property is over five acres. As stated above, the properties in question contain two separate tracts of record and are allowed one rental cabin per tract. The tent structures in question meet both the definition of a building and a structure as outlined above. Again, if the North Fork Land Use Advisory Committee has an issue with the type of construction allowed for a guest or rental cabin, the most appropriate course of action would be to propose to amend the text of the regulations.